

Public Necessity Rules
of the
Department of Commerce and Insurance
Division of Regulatory Boards

Statement of Necessity Requiring Public Necessity Rules

Pursuant to T.C.A. § 4-5-209, the Commissioner of Commerce and Insurance is authorized to promulgate public necessity rules in the event that the rules are required by an enactment of the general assembly within a prescribed period of time that precludes utilization of rulemaking procedures described elsewhere in T.C.A. Title 4, Chapter 5, for the promulgation of permanent rules.

Chapter 495 of the Public Acts of 2007 created a new licensure program for geologists ("Geologist Licensure Act of 2007") and required the Commissioner of Commerce and Insurance to promulgate rules and regulations to effectuate the purposes of the chapter. Section 15 of the Act specifically granted the Commissioner of Commerce and Insurance the authority to promulgate rules necessary to effectuate the intent of the Act. The Act makes the practice of geology unlawful on January 1, 2008 unless the person engaged in the practice of geology has met a number of prerequisites for licensure and has obtained a license granted by the Commissioner of Commerce and Insurance. These rules are necessary for the Commissioner of Commerce and Insurance to establish application requirements and to begin accepting and considering applications for geologist licenses so that the licensure program may commence on January 1, 2008.

Due to the length of time necessary to complete the rulemaking process, these public necessity rules are required in order for the Commissioner of Commerce and Insurance to comply with the enactment of general assembly and to ensure that the Commissioner of Commerce and Insurance has the resources necessary to implement the Act. The Commissioner of Commerce and Insurance is conducting a rulemaking hearing on November 21, 2007 to consider comments on the adoption of these as permanent rules.

For a copy of these public necessity rules contact: Donna Moulder, Geologist Licensing Program, 500 James Robertson Parkway, 3rd Floor, Nashville, Tennessee 37243 at (615) 253-1744.

Leslie A. Newman
Commissioner of Commerce and Insurance

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Chapter 0780-05-07
Geologists

Amendments

Rule 0780-05-07-.07 Fees is amended by deleting the rule in its entirety and substituting instead the following language so that as amended the rule shall read:

0780-05-07-.07 Fees.

- (1) Nonrefundable application fee and initial license fee.....\$115.00
- (2) The examination fee will be set by the entity designated by the State to administer the examination.
- (3) Renewal fee for active license\$100.00
- (4) Renewal fee for inactive license.....\$35.00
- (5) Inactive or Retirement fee.....\$35.00
- (6) Reinstatement fee.....\$65.00
- (7) The late renewal penalty fee is \$25.00 per month for each month or fraction of a month that renewal is late.
- (8) Duplicate license fee because license is lost, destroyed, or mutilated.....\$10.00
- (9) Roster fee.....\$10.00

Authority: Chapter 495 of the Public Acts of 2007, §§ 9, 12, 15, and 17 [effective January 1, 2008].

New Rules

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0780-05-07-.01 Purpose.

The rules in this chapter implement the Geologist Licensure Act of 2007.

Authority: Chapter 495 of the Public Acts of 2007, §§ 2 and 15 and T.C.A. § 62-36-101, et seq. [effective January 1, 2008].

0780-05-07-.02 Definitions.

In addition to the definitions contained in T.C.A. § 62-36-103, the following definitions are applicable to this chapter:

- (1) “Completed application” means the submission of the application form approved by the commissioner with all of the questions answered to the satisfaction of the commissioner, and accompanied by the required fee and all required documentation;
- (2) “Licensee” means an individual who holds a current, unexpired license as a professional geologist issued by the commissioner.

Authority: Chapter 495 of the Public Acts of 2007, §§ 2 and 15 [effective January 1, 2008].

0780-05-07-.03 Application for License.

- (1) Any person who seeks to be licensed as a professional geologist shall complete an application on a form prescribed by the commissioner and submit the completed application to the commissioner, along with the required application fee and all required documentation.
- (2) Applications for licensure are available upon request from the commissioner.
- (3) Any application submitted which lacks required information or reflects a failure to meet any requirement for licensure will be returned to the applicant with written notification of the information that is lacking or the reason(s) the application does not meet the requirements for licensure and will be held in “pending” status until satisfactorily completed within a reasonable period of time, not to exceed sixty (60) days from the date of application. After the sixty (60) day period, if the application is not satisfactorily completed, then the applicant shall reapply.
- (4) Any application submitted may be withdrawn; provided, however, that the application fee will not be refunded.

Authority: Chapter 495 of the Public Acts of 2007, §§ 9, 12, and 15 [effective January 1, 2008].

0780-05-07-.04 Application Requirements.

- (1) Beginning January 1, 2008, any person who desires to obtain a license as a professional geologist shall submit an application to the commissioner, along with the required application fee and all required documentation.
- (2) On or after January 1, 2008, but before January 1, 2009, an applicant for licensure shall furnish evidence satisfactory to the commissioner that the applicant:

- (a) Has graduated from an accredited college or university; and
 - (b) Has successfully completed a minimum of thirty (30) semester or forty-five (45) quarter hours of course work in geology, geophysics, geochemistry, engineering geology or their subdivisions.
- (3) On or after January 1, 2008, but before January 1, 2009, the commissioner may waive the academic requirements for licensure, if the applicant can demonstrate that the applicant has performed the following for five (5) consecutive years immediately prior to submitting a completed application to the commissioner:
 - (a) engaged in the practice of geology;
 - (b) taught geology at the college or university level; or
 - (c) engaged in geology research at the college or university level.
- (4) On or after January 1, 2009, an applicant for licensure shall furnish evidence satisfactory to the commissioner that the applicant:
 - (a) Has graduated from an accredited college or university;
 - (b) Has successfully completed a minimum of thirty (30) semester or forty-five (45) quarter hours of course work in geology, geophysics, geochemistry, engineering geology or their subdivisions;
 - (c) Has passed an examination approved by the commissioner;
 - (d) Has at least five (5) years of geological education and professional experience. In addition to the education and experience described in T.C.A. §62-36-109(a)(2), the following shall qualify as professional experience:
 - 1. Experience as a registered or licensed professional geologist;
 - 2. Experience as a subordinate or geologist in training working under the supervision of a registered or licensed professional geologist; or
 - 3. Experience practicing geology while in responsible charge of work.
- (5) Reciprocity. The commissioner may grant a license as a professional geologist to a individual who holds a like, unexpired license as a professional geologist issued by another state, territory, or possession of the United States, the District of Columbia, or any foreign country if such jurisdiction's requirements for licensure are at least equivalent to the requirements for licensure in Tennessee. Such applicant shall file with the commissioner the required application form and fee, along with proof that the applicant holds a current, valid license as a professional geologist.
- (6) A sole proprietorship, partnership, or corporation that provides geological services as its primary activity shall file with the commissioner, on a form prescribed by the commissioner, a list of the names and addresses of all resident principals or officers who are licensed as professional geologists in Tennessee and are in responsible charge of the services provided. For the purposes of this rule, the term "geological services" means the same as provided in Tenn. Code Ann. §62-36-103 under the term "practice of geology".

Authority: Chapter 495 of the Public Acts of 2007, §§ 8, 10, 11, and 15 [effective January 1, 2008].

0780-05-07-.05 Renewal Requirements.

- (1) A license issued to a licensed professional geologist pursuant to this chapter shall expire two (2) years from the date of its issuance and shall become invalid on such date unless renewed.
- (2) In order to renew his or her license, a licensee shall submit a renewal application with the renewal fee and with any other prerequisites for renewal.
- (3) A licensee who fails to pay the renewal fee, the applicable late penalty, or otherwise fails to comply with any of the prerequisites for renewal of a license before the expiration date of the license will have six (6) months after the expiration date of the license to renew the license upon payment of the renewal fee, payment of a late penalty of twenty five dollars (\$25.00) for each month or fraction of a month that renewal is late, and submit proof of compliance with any other prerequisites to renewal. A licensee is ineligible to engage in the practice of geology during the six (6) month period that the licensee's license is expired.
- (4) Any person seeking renewal of a license more than six (6) months after the expiration date of the license is required to reapply for licensure and fulfill all of the requirements for initial licensure.
- (5) A fee submitted by mail to the commissioner for purposes of renewal will be deemed to have been submitted on the date that the renewal fee is processed by the State of Tennessee.

Authority: Chapter 495 of the Public Acts of 2007, §§ 12 and 15 [effective January 1, 2008].

0780-05-07-.06 Retired or Inactive Status.

- (1) A licensee may request to place his license in inactive or retired status by:
 - (a) submitting a written request to place his or her license in inactive or retired status to the commissioner;
 - (b) paying an inactive or retirement fee; and
 - (c) paying a biennial renewal fee for an inactive license.
- (2) A licensee may request to have his or her license reinstated after it has been placed in inactive or retired status by:
 - (a) submitting a written request to have his or her license returned to active status; and
 - (b) paying a reinstatement fee.

Authority: Chapter 495 of the Public Acts of 2007, §§ 4, 8, and 12 [effective January 1, 2008].

- (1) The design of a licensee's seal required by T.C.A. §62-36-112 shall be as follows:



- (2) Subject to the requirements of this rule, rubber-stamp, embossed, transparent self-adhesive or electronically-generated seals may be used by the licensee; however, such stamps or seals shall not include the licensee's signature or date of signature.
- (3) Subject to the requirements of this rule, the licensee may affix his or her electronically-generated signature and date of signature to plans, plats, drawings, reports, or other geologic papers or documents as long as the licensee utilizes a secure method of affixation, does not authorize any other person to affix his or her signature and date, and does not allow any other person to have access to his or her signature.
- (4) The licensee shall stamp with his or her seal to all original sheets of any bound or unbound plans, plats, drawings, reports, or other geologic papers or documents involving geologic work developed by the licensee or under the licensee's responsible charge of work.
- (5) The licensee shall superimpose his or her signature (not a rubber stamp) and date of signature across the face and beyond the circumference of the seal on the documents listed above.
- (6) Any portions of plans, plats, drawings, reports, or other geologic papers or documents involving geologic work prepared in part by a licensee functioning as a consultant on a project shall place his or her signature on the pages of the document for which the licensee is responsible.
- (7) No licensee shall affix his or her seal or signature to plans, plats, drawings, reports, or other geologic papers or documents developed by others not under the licensee's responsible charge of work as defined by T.C.A. §62-36-103.
- (8) Responsible Charge of Work.
 - (a) Plans, plats, drawings, reports, or other geologic papers or documents involving geologic work prepared in part or in whole by a licensee or the licensee's subordinate will be deemed to have been prepared under the responsible charge of work only when:
 1. The client or employer requesting preparation of plans, plats, drawings, reports, or other geologic papers or documents makes the request directly

to the licensee or to the licensee's subordinate at the time initial client or employer contact is made, so long as the licensee has the right to control and direct the subordinate in the material details of how the work is to be performed;

2. The licensee supervises and is involved in the preparation and approval of the plans, plats, drawings, reports, or other geologic papers or documents and has input into and full knowledge of their preparation prior to their completion;
 3. The licensee reviews the final plans, plats, drawings, reports, or other geologic papers or documents; and
 4. The licensee has the authority to, and does, make any necessary and appropriate changes to the final plans, plats, drawings, reports, or other geologic papers or documents.
- (b) Any changes made to the final plans, plats, drawings, reports or other geologic papers or documents after final revision and sealing by the licensee are prohibited by any person other than the licensee.
- (c) The mere review of work prepared by another person, even if that person is the licensee's subordinate, does not constitute responsible charge of work unless the licensee has met the criteria set out above.

Authority: Chapter 495 of the Public Acts of 2007, §§ 13 and 15 [effective January 1, 2008].

0780-05-07-.09 Civil Penalties.

- (1) With respect to any licensed professional geologist, the commissioner may, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty against such licensee for each separate violation of a statute, rule or commissioner's order pertaining to licensed professional geologists, in accordance with the following schedule:

Violation	Penalty
(a) T.C.A. § 62-36-119	\$0 - \$1,000
(b) Rule 0780-05-07-.08	\$0 - \$1,000
(c) Rule 0780-05-07-.10	\$0 - \$1,000
(d) Commissioner's order	\$0 - \$1,000

- (2) With respect to any person required to be licensed in this state as a licensed professional geologist, the commissioner may assess a civil penalty against such person for each separate violation of a statute in accordance with the following schedule:

Violation	Penalty
(a) T.C.A. § 62-36-104	\$0 - \$1,000

- (3) Each day of continued violation may constitute a separate violation.
- (4) In determining the amount of any penalty to be assessed pursuant to this rule, the commissioner may consider such factors as the following:
- (a) Whether the amount imposed will be a substantial economic deterrent to the violator;

- (b) The circumstances leading to the violation;
- (c) The severity of the violation and the risk of harm to the public;
- (d) The economic benefits gained by the violator as a result of noncompliance;
- (e) The interest of the public.

Authority: Chapter 495 of the Public Acts of 2007, §§ 10, 11, and 15 [effective January 1, 2008] and T.C.A. § 56-1-308.

0780-05-07-.10 Code of Professional Conduct.

- (1) Licensees shall uphold the public health, safety, and welfare in the performance of professional services.
- (2) Licensees shall observe and comply with all federal, state and local building, fire, safety, real estate, or mining codes, as well as other laws, codes, ordinances, or regulations pertaining to the practice of geology.
- (3) Licensees shall not undertake any type of work that he or she is not competent to undertake unless the licensee discloses his or her lack of training, experience, or education in writing to all appropriate parties prior to undertaking the work.
- (4) Licensees shall not affix their signatures and/or seal any plans, plats, drawings, reports, or other geologic papers or documents with subject matter in which they lack competence acquired through education or experience, nor shall licensees affix their signatures and/or seal plans, plats, drawings, reports, or other geologic papers or documents that were not prepared or reviewed by the licensee or the licensee's subordinate and approved by the licensee.
- (5) Opinions expressed by licensees shall only be based on their education, experience, and honest convictions.
- (6) Licensees shall not disclose any information about the lawful business affairs or technical processes of a client or employer without the approval of the client or employer, or the client's/employer's designated representative, unless required by subpoena or in response to a complaint filed with the commissioner.
- (7) Licensees shall not knowingly participate in any illegal activities, or knowingly permit the publication of his or her plans, plats, drawings, reports, or other geologic papers or documents for illegal purpose.
- (8) Licensees shall not issue false or misleading information or statements to a client.
- (9) No licensee shall accept compensation or any other consideration from more than one (1) interested party for the same service without the consent of all interested parties.
- (10) No licensee shall accept or offer commissions or allowances, directly or indirectly, from other parties dealing with the client or employer in connection with work for which the licensee is responsible.
- (11) Before the execution of a contract to perform geology services, a licensee shall disclose to the client or employer any actual or potential conflicts of interest, which may affect the licensee's ability to serve the client or employer.

- (12) Licensees shall not engage in false or misleading advertising or otherwise misrepresent any matters to the public.

Authority: Chapter 495 of the Public Acts of 2007, §§ 15 and 18 [effective January 1, 2008].

The public necessity rules set out herein was properly filed in the Department of State on this the 27th day of November, 2007, and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 10th day of May, 2008. (FS 11-21-07; DBID 2756)